

## ON - THE - JOB

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### Commissioner's Corner.....

## Two Funds Assist Utah's Injured Workers

Utah's dedicated and well-trained workforce is one of the most valuable and essential resources for which Utah is recognized.

Needless to say, the safety of this workforce is our ultimate goal. Unfortunately, there are, on occasion, accidents which occur in the workplace. The good news, however, is that Utah has in place a workers' compensation system which has been recognized as a model in the nation. Utah's costs to employers are among the lowest in the nation, while benefits paid to injured workers are handled in a fair and responsible manner.



An essential part of the workers' compensation system often overlooked, and probably even unknown by many, is the two trust funds administered by the Utah Labor Commission as charged by the legislature and funded by surcharges placed on workers' compensation insurance premiums. These two funds are known as the Employers' Reinsurance Fund (ERF) and the Uninsured Employers' Fund (UEF). Because these funds are probably the best kept

secret in the state, let me explain a little of their history and purpose.

### Employers' Reinsurance Fund

The ERF was re-named in 1988 from the Second Injury Fund. The ERF's purpose is to pick up the liability on injured workers that were injured prior to July 1, 1994, and who have been deemed permanent and totally disabled after the employer and their insurance carrier have paid benefits for six years. The Second Injury goes back to at least 1953. In 1988, the legislature, in addition to renaming it the ERF, made minor changes in its purpose. In 1994, the legislature made major revisions to the Workers' Compensation Act. Acknowledging how badly the ERF was underfunded, the legislature did a major overhaul to the fund. Changes were made to limit the fund's liability only to pay benefits to those injured workers whose injuries occurred prior to July 1, 1994. Injuries that occurred after that date became the responsibility of the employer and their insurance carrier for the life of the claim. The ERF currently has 1,581 perm total individuals receiving benefits from the ERF on a monthly basis.

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The ERF is funded by a 7.25% surcharge on the employers' workers' compensation insurance premium which is the maximum allowed by statute.

At the present time, the fund has a liability of approximately \$267 million and a fund balance of \$75 million, which far exceeds the statutory

minimum fund balance. The actuarial report anticipates that the ERF will be fully funded to meet all of its liabilities by 2011.

### Uninsured Employer's Fund

Utah workers received a tremendous benefit in the creation of the UEF which occurred through the legislature in 1984. The intent for this fund is to pay benefits to injured workers when the Utah employer is uninsured and bankrupt or otherwise insolvent. Utah is numbered among just a handful of states which have such a fund. Credit is due the Utah employers who were then, and are now, willing to fund such a program to take care of these injured workers. This fund is also funded by a surcharge on employers' workers' compensation insurance premiums and by revenue from penalties

assessed against uninsured employers. Currently the premium assessment is  $\frac{1}{4}$  of 1%. The statute places a cap on premium assessments of  $\frac{1}{2}$  of 1%.

The Industrial Accidents Division has been very aggressive in pursuing penalties against uninsured employers which resulted in over \$2 million in revenue for the UEF this past year which

helps to keep the premium assessment low. The fund currently has projected liabilities of approximately \$16.5 million and has a balance of almost \$22 million making the status of the fund in excellent financial condition. By statute, the UEF must maintain a minimum balance of approximately \$9 million. The Legislature each year approves administrative expenditures from these two funds as recommended by the Labor Commission as a part of the appropriations process.

Utah employers should be commended for the dedication they have to caring for our injured workers and their willingness to provide benefits when the need arises. These two funds are important aspects of our workers' compensation system and provide assistance for our injured workers in an equitable and responsible manner.

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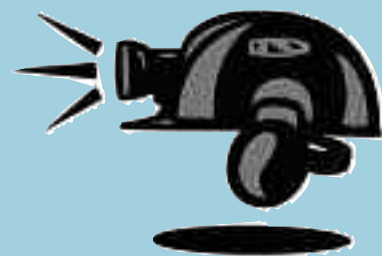
## New Study Guides for the Mining Certification Office

By Ami Johnston – Boiler & Elevator Safety

With a little help from our Federal counterpart (MSHA), the Utah Labor Commission, Division of Boiler and Elevator Safety entered into an agreement with an engineering firm in Eastern Utah to produce a set of study guides. The guides will help to educate and prepare Utah coal mine workers for the testing process involved in obtaining various certifications required for occupations within the mining industry.

These study guides, five in total, will enable the future miners to study at home in preparation to take the exams and therefore fulfill the requirements of these different jobs. The guides will also assist in

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# The name has changed... but the work remains the same

By Brent Asay, Wage Claim Unit Manager

**T**he Utah Labor Commission announces the name change of their Employment Standards Bureau to the Wage Claim Unit, which is housed within the Anti-Discrimination and Labor Division of the Commission. Although the name has changed, the work remains the same!

The name Wage Claim Unit better describes the wage claim administration and processing which constitutes the great bulk of the work performed by a team of four wage claim specialists, one hearing officer, and one manager. Sherrie Hayashi, Commissioner of the Utah Labor Commission said, "The name Wage Claim Unit more accurately identifies the service we provide and will lend greater assistance to people when seeking our services."

**"The name Wage Claim Unit more accurately identifies the service we provide and will lend greater assistance to people when seeking our services."**

Over the past four fiscal years, the Employment Standards Bureau saw an average of 1,700 wage claims filed per year, and achieved an average of

\$1,000,000 per year in the collection of wages and enforcement penalties. While performing this work in fulfilling the mandates of the Utah Payment of Wages Act, the staff of six has also

administered the Utah Employment of Minors Act and the Utah Minimum Wage Act, while constantly fielding calls from the public about wages, employment of minors, minimum wage and other employment issues, and conducting a community outreach effort educating employers about the standards and requirements of these laws.

This critical work continues to be a total team effort carried on by the Wage Claim Unit.



## Interested in improving workplace safety and health?

Then check out this website.....

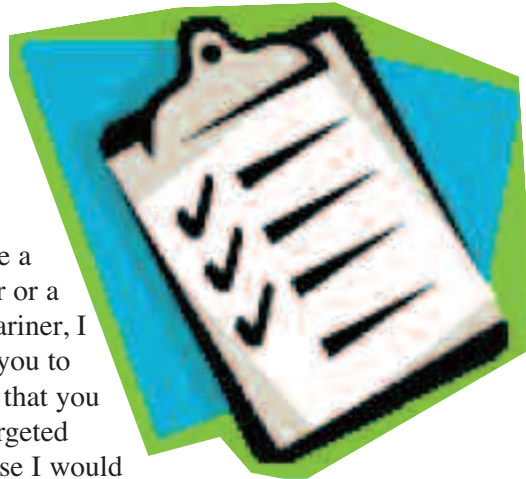


This is a BRAND NEW feature on the federal OSHA website. It provides information to businesses on the benefits of improving workplace safety and health.

<http://www.osha.gov/dcsp/products/topics/businesscase/index.html>

# ARE YOU ON OUR LIST?

By Larry A. Patrick, UOSH Administrator



Today, I am going to talk about targets and targeting. I have been after targets my entire life. As a boy growing up in rural western Colorado, my world was full of targets. Armed with a BB-gun or a .22 caliber rifle, I spent many hours searching out targets. As I grew older my targets changed, but the search continued. When I was an officer on a submarine, we used to have a saying - "There are two types of ships in the world - submarines and targets." I am still after targets, but my tactics have changed. On a submarine we didn't want our target to know we were there so stealth and surprise were at a premium.

Today, I want my targets to know they are targeted, so I announce my intentions to anyone who cares to listen. Consider the rest of this article an announcement to my targets. If you happen to be a target, I urge you to heed the warning.

Let me be very blunt - the Utah Occupational Safety and Health (UOSH) Division has targets. Let me be even more blunt - if you are an employer with a poor safety and health program and think that UOSH doesn't know about you, YOU ARE WRONG. We know your name, your address, your safety and health history, and it is just a matter of time before we arrive at your workplace to hold you accountable for that record.

Unlike a hunter or a submariner, I want you to know that you are targeted because I would really like you to take action to get off of our target list. And by the way, there is an actual list and now I am going to tell you how it is developed. Every

**"If an industry's rate is double the state's average, it becomes a targeted industry.**

**...if the industry's rate is higher than the state's average and there is a recent history of accidents or fatalities, it becomes a targeted industry.**

**...if an industry was on a previous year's target list and its incidence rate remains higher than the state's average, it remains a targeted industry".**

year the UOSH Data and Statistics group manages an injury and illness survey for the U.S. Department of Labor's Bureau of Labor Statistics (BLS). The BLS releases the survey results each year in December and it includes Utah's average injury and illness incidence rate as well as rates for each industry classification.

UOSH compares the industry rates with the state's average rate. If an

industry's rate is double the state's average, it becomes a targeted industry. Additionally, if the industry's rate is higher than the state's average and there is a recent history of accidents or fatalities it becomes a targeted industry. Finally, if an industry was on a previous year's target list and its incidence rate remains higher than the state's average, it remains a targeted industry. Just so there is no doubt who our targets are for this year I have included the following table:

## Utah's average injury and illness incidence rate - 5.7

Targeted Industry	Injury and Illness Incidence Rate
Oil and Gas	9.8
Utilities (public sector only)	19.4
Meat and Dairy Products	10.2
Wood Product Manufacturing <sup>2</sup>	0.4
Courier/Messengers	17.0
Plastic and Rubber Products Manufacturing	12.0
Amusement and Recreation Industries	12.7

Once we have a targeted industry, we use local data from the Commission's Industrial Accidents Division and the Department of Workforce Services to determine specific workplaces that are causing the industry's high rate.

There is another targeting list that you really don't want to be on - Federal OSHA's Enhanced Enforcement Policy list. You earn the dubious honor of being on this list by the repeated demonstration of poor safety and health practices in a number of states. Even if your Utah record is acceptable, if your company makes this list, federal OSHA will ask UOSH to target your workplaces in Utah.

Earlier I mentioned that I really wanted to get you off of our list and I am offering free assistance. Over the next year, if you are an employer on the UOSH target list, you will receive a letter from me urging you to take action. Following is an actual excerpt from one of those letters:

*"I personally urge you to review your company's safety and health program. If your review shows a need for improvement, several options are available to you. For example, if your company has less than 250 employees on site or less than 500 employees corporate-wide, one possible means of improving your safety and health program is to request free confidential occupational safety and health consultation services provided by the*

*UOSH Consultation program. If you are interested in these services, please contact Mr. Louis M. Silva, Consultation Program Manager, by telephone at (801) 530-6855 or by e-mail at lsilva@utah.gov. For other options (OSHA website, UOSH website, workers compensation insurance provider, etc.) please call UOSH at (801) 530-6901 for assistance."*

Since we are approaching the holiday season, I will close with a reminder taken from a well-known holiday song –

*"He's making a list  
and checking it twice,  
He's goin' to find out who's  
naughty or nice...."*

In the UOSH case, the list is already made. Are **you** on it?

**UOSH**  
**MISSION STATEMENT**  
**To improve  
workplace safety**



# Supreme Court Ruling

By Alan L. Hennebold, General Counsel

Workers' compensation disability benefits pay for the necessities of life until an injured worker can return to work. These monthly payments preserve the injured worker's independence so that he or she does not have to turn to government welfare or private charity.

Unfortunately, some individuals outside the workers' compensation system see these disability payments as a way to make money for themselves. They offer injured workers a small immediate cash payment in exchange for the right to receive the injured worker's future disability benefits. Too often, the injured worker spends the cash unwisely and then has nothing to live on. In *Florida Asset Financing v. Utah Labor Commission, et al.*, 2006 UT 56, issued September 29, 2006, the Utah Supreme Court resolved part of this problem by ruling that the Commission is not required to pay disability benefits to a third party if the Commission has received contrary instructions from the injured worker.

The *Florida Asset* decision arose out of Robert Williams' workers' compensation claim. Mr. Williams worked as a truck driver until he was involved in a "chain reaction" traffic accident. He suffered brain damage and other injuries the left him totally disabled. As a result, he was awarded disability compensation payable in monthly installments for the rest of his life. Mr. Williams then "sold" his right to future disability payments, worth \$236,000, to Florida Asset for \$69,000. Florida Asset attempted to lock up its claim on Mr. Williams' future disability compensation by having Mr. Williams sign various trust and security agreements, as well as a so-called "irrevocable" letter



instructing the Commission to pay the disability compensation into a trust, which would then turn the money over to Florida Asset.

For a while, the Commission complied with Mr. Williams' original instructions. During that time Mr. Williams, who was incapable of handling financial affairs, spent all the cash he had received from Florida Asset. Unable to work and with no other source of income, Mr. Williams was destitute and homeless. Out of desperation, he instructed the Commission to pay his monthly disability benefits directly to him. In response, Florida Asset demanded that the Commission ignore Mr. Williams' instructions and continue sending the disability payments to the trust.

Faced with these two contradictory requests, the Commission concluded that § 422 of the Utah Workers' Compensation Act required the Commission to comply with Mr. Williams' most recent instructions. The Commission began sending the disability benefits to Mr. Williams. Florida Asset filed suit in District Court to force the Commission to pay the disability compensation to Florida Asset.

The District Court ruled in favor of Florida Asset, but the Utah Court of Appeals and then the Utah Supreme Court reached the opposite decision. The appellate courts Concluded that § 422 of the Workers'

## Supreme Court Ruling

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Compensation Act protected Mr. Williams' right to actually receive his disability compensation. Specifically, the Supreme Court (Justice Nehring dissenting) held that, even if an injured worker has

assigned disability compensation to a third party, the injured worker can still require that such benefits be paid directly to him or her.

As a consequence of the Supreme Court's decision, it is now settled that an injured worker's creditors may seek payment directly from the injured worker, but has no right to intercept disability benefits before they are actually paid to the injured worker.

## The "Rules" Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



RULE NUMBER	DESCRIPTION	STATUS
<b>Rule 614-1-4.A</b> <b>UOSH</b>	<b>Respiratory Protection Standards.</b> This amendment augments existing provisions for respiratory protection by establishing criteria for selecting the proper respirator for use in various environments.	Discussed at public meeting on October 11, 2006. To be published in November 2006.
<b>R612-4-2</b> <b>Industrial Accidents</b>	<b>Premium Rates for UEF and ERF.</b> Continues existing premium rates for Employers' Reinsurance Fund at 7.25% and Uninsured Employers' Fund at .25%	Discussed at Advisory Council and public meeting during October, 2006. To be published in November 2006. Effective January 1, 2007.
<b>R612-2-2</b> <b>Industrial Accidents</b>	<b>Medical records.</b> This rule clarifies the authority of an administrative law judges to act on requests for medical records in cases pending before the ALJ.	Discussed at public meeting & published June 1. Effective July 11.
<b>R 612-2-5</b> <b>Industrial Accidents</b>	<b>Medical fees.</b> This rule updates standards for fees that may be charged for medical treatment of workplace injuries. Specifically, the rule incorporates '06 editions of RBRVS and CPT4.	Discussed at public meeting & published June 1. Effective July 11.
<b>R 612-7-3</b> <b>Industrial Accidents</b>	<b>Rating impairments.</b> This rule incorporates the 2006 Utah Impairment Guides, which provide guidance in assessing permanent impairments resulting from workplace injuries and diseases.	Discussed at public meeting & published June 1. Effective July 11.

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### Miner Certification Guides

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training the miners to function at the level of expertise needed in their chosen field.

The Division of Boiler and Elevator Safety received a grant from MSHA which allowed the Division to enter into an agreement with the engineering firm, specializing in coal mining. Currently, the Division has received all five study guides and has prepared two of them for resale.

**The guides will also assist in training the miners to function at the level of expertise needed in their chosen field.**

These study guides are available to the public in the Miner Certification Office located in Price, Utah, at 940 S. Carbon Avenue. The Division is now in the process of reviewing the remaining guides for accuracy and soon will prepare them for production and resale as well.

These guides are available to the public at a cost not to exceed \$10.00 per guide.

Any questions can be directed to either the Division of Boiler and Elevator Safety in Salt Lake City at (801) 530-6850, or our Price office at (435) 636-1465.

### Request Form

- ☐ Please delete my name from your mailing list.
- ☐ Please add my name to your mailing list. I would like to receive your quarterly newsletter.
- ☐ Please correct my name/address on your mailing list. I am currently receiving your quarterly newsletter. (Enclosed incorrect label.)

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